

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MARTHA R. MUZI,

Plaintiff,

v.

LESLIE MUNIZ, et al.,

Defendants.

Case No. 5:15-cv-02001-PSG

**REPORT AND RECOMMENDATION  
REMANDING SUA SPONTE AND  
DENYING MOTION TO PROCEED  
IN FORMA PAUPERIS**

Plaintiff Martha R. Muniz initiated this unlawful detainer action in state court.<sup>1</sup> Defendant Leslie Muniz subsequently removed the case to federal court<sup>2</sup> and at the same time, filed a motion to proceed in forma pauperis.<sup>3</sup> The parties have not consented to magistrate jurisdiction,<sup>4</sup> so this matter will be reassigned to a district court judge. The court recommends the case be remanded for

<sup>1</sup> See Docket No. 1-1.

<sup>2</sup> See Docket No. 1.

<sup>3</sup> See Docket No. 3.

<sup>4</sup> See 28 U.S.C. § 636(c) and Fed. R. Civ. P. 72(a).

1 lack of subject matter jurisdiction<sup>5</sup> and Defendant's motion to proceed in forma pauperis denied as  
2 frivolous.<sup>6</sup>

3 When presented with an application to proceed in forma pauperis, a court must first  
4 determine if the applicant satisfies the economic eligibility requirement of 28 U.S.C. §  
5 1915(a).<sup>7</sup> Section 1915(a) does not require an applicant to demonstrate absolute destitution.<sup>8</sup> An  
6 IFP application will be denied and the action dismissed, however, if the party seeking IFP status  
7 has filed a pleading or petition that is legally frivolous.<sup>9</sup> A submission is "frivolous" for IFP  
8 purposes and therefore subject to summary dismissal under § 1915(e)(2)(B)(i) "where it lacks an  
9 arguable basis either in law or in fact."<sup>10</sup>

11 In their notice of removal, Defendants assert that there is federal question jurisdiction over  
12 the case,<sup>11</sup> but their position lacks merit. Federal question jurisdiction depends on the contents of  
13 the plaintiff's well-pleaded complaint and may not be predicated on the defendant's counterclaims  
14

15  
16  
17  
18 <sup>5</sup> Cf. *Louden, LLC v. Pajarillo*, Case No. 12-cv-2638-EMC, 2012 WL 3155151, at \*1 (N.D. Cal.  
19 Aug. 2, 2012); *3925 Alameda Prop. LLC v. Brainerd*, Case No. 12-cv-4924-EMC, 2012 WL  
20 5199170, at \*2 (N.D. Cal. Oct. 22, 2012); *Compass Bank v. Goble*, Case No. 12-cv-1885-WQH,  
21 2012 WL 3229155, at \*2 (S.D. Cal. Aug. 3, 2012); *Bank of Am., Nat. Ass'n v. Soliven*, Case No.  
22 10-cv-1844-IEG, 2010 WL 3636260, at \*2 (S.D. Cal. Sept. 14, 2010).

23 <sup>6</sup> Cf. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Hoke v. Arpaio*, 92 F.3d 1192, 1192 (9th Cir.  
24 1996).

25 <sup>7</sup> See *Franklin v. Murphy*, 745 F.2d 1221, 1226 n.5 (9th Cir.1984).

26 <sup>8</sup> See *McCone v. Holiday Inn Convention Ctr.*, 797 F.2d 853, 854 (10th Cir.1982) (citing *Adkins v.*  
27 *E.I. Du Pont de Nemours & Co., Inc.*, 335 U.S. 331, 339 (1948)).

28 <sup>9</sup> See 28 U.S.C. § 1915(e)(2)(B)(i).

<sup>10</sup> *Neitzke*, 490 U.S. at 325; *Hoke*, 92 F.3d at 1192.

<sup>11</sup> See Docket No. 1 at 2, 3.

1 or defenses.<sup>12</sup> Here, Muzi's well-pleaded complaint asserts a claim based on state law only—that  
2 is, unlawful detainer.<sup>13</sup>

3 As a result, the court recommends the case be remanded to state court for lack of subject  
4 matter jurisdiction and the IFP motions denied as frivolous.

5 **SO ORDERED.**

6 Dated: May 5, 2015

7  
8   
9 PAUL S. GREWAL  
10 United States Magistrate Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

25 <sup>12</sup> See *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826 (2002); *ARCO*  
26 *Envtl. Remediation, L.L.C. v. Department of Health & Env'tl. Quality of St. of Mont.*, 213 F.3d 14  
27 1108, 1113 (9th Cir. 2000).

28 <sup>13</sup> See Docket No. 1-1.